IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR

ORDER

1. Pooran Mal Vyas. **VS.** The Jodhpur Central Cooperative Bank Ltd. Jodhpur & Anr.

S.B.CIVIL WRIT PETITION NO. 4659/1993

2. Hari Singh Rathore **Vs.** The Jodhpur Central Cooperative Bank Ltd. Jodhpur & Anr.

S.B.CIVIL WRIT PETITION NO. 4196/1993

3. Bhanwar Lal Beghela & Ors. **Vs.** The Jodhpur Central Cooperative Bank Ltd. Jodhpur & Anr.

S.B.CIVIL WRIT PETITION NO. 4197/1993

Under Article 226 of the Constitution of India.

Date of order : 1st Nov., 2004

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA

Mr. P.P. Choudhary for the petitioner(s)
Mr. D.K. Parihar for the respondents.

BY THE COURT:-

These petitions have been filed challenging the order passed by Managing Director of the respondent Bank on 15.7.1993 reverting Shri Hari Singh Rathore, Shri Hari Ram Soda, Shri Bhanwar Lal Baghela and Shri Puranmal Vyas.

The impugned order has been passed in

pursuance of directions issued by this Court in S.B. Civil Writ Petition No.2793/1984 and other matters which order has been reproduced in the writ petition, and a copy of which has been produced, directing the Bank to take a decision about the continuance of the persons mentioned in Annex.P/5 on permanent basis, if Rules permit, or otherwise if they are entitled to the same, the same was to be done within two months.

The back ground of these petitions are that the petitioners in respective writ petitions were employed as Loan Supervisors with the Bank. By order dated 29.10.1983 Shri Hari Singh Rathore, Shri Bhanwar Lal Baghela and Shri Puranmal Vyas were promoted as Assistant Executive Officer with immediate effect. Likewise, the other two petitioners Shri Hari Ram Sodha and Purkha Ram were also appointed by promotion as Assistant Executive Officers on 4.8.1982.

Subsequent thereto, by order dated 15.9.1984 Shri Hari Singh, Shri Bhanwar Lal Baghela and Shri Puranmal were directed to be reverted back to the original post of Loan Supervisors with immediate effect.

This order was subject matter of the aforesaid writ petition in which the directions as

stated above were issued.

Pursuant to the said directions, notices were issued to the incumbents who were promoted as Assistant Executive Officer, who were allowed to continue under the interim orders passed by this Court in the writ petition filed by the petitioners and finally the impugned order was passed on 15.7.1993. The reasons given in the order was that the Dy. Registrar, Cooperative Societies informed vide letter dated 17.4.1984 that no promotion can be offered to Loan Supervisors in the Bank. It was also stated that the promotion made in 1982-83 were not through the Departmental Promotional Committee and the order of reversion was made in pursuance thereof. Another reason which appears from the order is that the writ petition No.2074/1987, All Rajasthan Cooperative Bank Employees Union was then pending before the Court which was agitating that the promotions ought not to be given to the Loan Supervisors in the Bank.

During the course of hearing, it was not in dispute that the said writ petition No.2074/84 filed by the All Rajasthan Cooperatives Bank Employees Union agitating to thwart the promotions of Loan Supervisors in the bank service on the higher post of Assistant Executive Officer has been dismissed. Therefore, one

reason on which the order dated 15.7.1993 was found does not exist.

The Cadre Authority's communication dated 14.3.1984 has referred to the fact that the promotions had not been accorded in terms of the order issued by the Registrar in exercise of his authority under Rule 41 of the Rajasthan Cooperative Societies Rules, 1966. On the other hand, the Dy. Registrar (Banking) in his letter dated 17.4.1984 has taken the stand that the Loan Supervisors are not even the bank employees and, therefore, they cannot be promoted in the Bank. He has also directed that the bank should select the appropriate candidates by following the procedure laid down in notification dated 2.4.1980 issued under Rule 41 by the Registrar.

In reply submitted to the writ petition Nos.4196/93 and 4197/93, the principal stand taken by the respondents is that the petitioners concerned were originally not the employees of the Bank but were the employees of the Cadre Authority under the Rules of 1976 and, therefore, they were not entitled to be promoted in the bank. It was also contended that under the Rules of 1976, the promotion could take place only on the recommendations of the Cadre Authority and since the promotions of the petitioners

were not recommended by the Cadre Authority, their selections were invalid, therefore, temporary promotions on the post of Assistant Executive Officer were invalid.

The reasons stated in the impugned order and the reasons stated in the two communications respectively from the Cadre Authority and the Dy. Registrar (Banking) and the stand taken by the respondents depict confusion in the understanding of whole issue and betrays ad hoc application of mind to the question. The facts which are not disputed are that all the petitioners were given appointments as Loan Supervisors. The appointment order dated 27th Oct., 1976 has been issued by the Executive Officer of the Bank and they have been appointed as Loan Supervisors under the Bank. It is difficult to understand on what premises the stand has been taken by the respondents that Loan Supervisors are not the officers of the Bank. If the appointment order has been issued by the Bank, the bank is estopped from disowning their status as its employee. The fact that the selection has been made by the Cadre Authority in terms of Rules of 1976 does not make the selected candidates employees of the Cadre Authority because under the Cooperative Societies Act, under which the Central Cooperative Bank has been constituted is

itself a juristic person and is in existence as an entity. The persons are employed under the society and not under the Cadre Authority, though their promotions were regulated by the Statute according to which the Cadre Authority was constituted for the purpose of laying down a uniform employment / promotion policy for the cooperative societies under the State. But because under regulatory Statute, Cadre Authority looks after selection of persons, the persons so selected and employed in pursuance of such selections by the Cooperative Societies concerned, they cannot be termed as the employees of the Cadre Authority.

The orders dated 27th Oct., 1976 which is appointment orders of Hari Ram S/o Purkha Ram Sodha, Shri Mangi Lal S/o Shri Nand Ram, Bhanwar Lal S/o Lalu Ram, also make it apparent that appointment to selected candidates was given by the Jodhpur Central Cooperative Bank only. So also the confirmation order dated 7.6.1980 (Annex.P/2) was also issued by the Bank. In response to the query raised by the Chairman of the Central Cooperative Bank, Pali vide his letter dated 23.11.1981 about the status of Loan Supervisors and their status after their promotions in the bank, the Dy. Registrar (Banking), the Cooperative Societies, Cooperative Department of the Government of

Rajasthan, vide his letter dated 19.4.1982 stated that Loan Supervisors on their selections as Loan Inspector shall remain the employees of the Bank. It also clearly indicates that before their promotions to the next higher post, Loan Supervisors were the employees of the Bank.

In this connection, it is pertinent to notice that when the petitioners were promoted in 1982-1983, the Registrar, in exercise of his power under Rule 41, has issued further directions about the promotions and selections to the post of Assistant Executive Officer in the Bank. Prior to that, the Registrar has notified the Rules laying down for appointment in service on various posts indicated under the Rules 1976.

It may be appropriate to notice here that Rule 41 of the Rules of 1976 clearly indicates that any employment under the provisions of the Act and Rules is for discharging the functions of the bank and not otherwise. Rule 41 envisages the authority of the Registrar in the matter of employment under the bank by providing that notwithstanding anything contained in the bye-laws of society, **no Cooperative society shall appoint any person as its paid officer or employee in any category of service, unless he possess the qualifications and furnishes security, if so**

specified by the Registrar from time to time, for such category of service in the society, or for the class of society to which it belongs. The conditions of service of the employees of the societies shall be as specified by the Registrar.

Rule 41 therefore, clearly envisages that the Registrar has been made highest authority for providing for qualification required for any officer or employee of the bank to be appointed under it and he is also to prescribe the conditions of service of the employees of the society.

It is in exercise of its power, the Registrar has, in the first instance, got the notification of 1976 published prescribing the terms and conditions and qualifications of certain officers namely General Managers/ Deputy Managers, Executive Officers/ Assistant Executive Officers; Chief Branch Managers and Accountants vide notification published in the official gazette on 2.9.1976. These Rules provided procedure only for certain posts enumerated in schedule II, who were to be officers of the Bank. It did not make the persons appointed to a Bank on selection by cadre Authority as employees of Cadre Authority under Rule 6 of Rules of 1976. For the purpose of gradation, three classes were formed (i)

General Manager, (ii) Dy. Manager, /Ex. Officers/ Asstt. Executive / Chief Accountant, or (iii) Branch Manager / Accountant. While for all categories of Banks viz. A class, B class and C class, Branch Manager and Accountant will be of same category, General Managers for different Banks will be of three different categories viz Dy. Manager/Executive Officer/Assistant Executive Officer, depending on the categories of Bank to which they are posted. But all the posts, by nature of which were considered inter changeable.

However, these rules do not envisage that appointments made in the Bank to all other posts, not include in the Rules of 1976 cannot be treated as Bank employees. In fact, it was envisaged under the Rules of 1976 itself certain feeder channel amongst the employees of Bank for appointment to the posts covered by the Rules.

These Rules of 1976 while providing the condition of cadre committee for making selections to the posts covered under the Rules, as noticed above also covered the post of Assistant Executive Officer under item 5 to the schedule-II appended thereto. For promotion to the post of Assistant Executive Officer, feeder channel included the Loan Supervisors.

Apparently, it cannot be said that the Loan Supervisors, who were appointed in the Bank as a post inferior to Assistant Executive officer were not eligible or could not have been given promotions in the bank service under the Rules of 1976 as laid down by the Registrar which were the rules framed for the cooperative bank in particular.

As has been noticed above, the Cadre Authority had advised for cancellation of promotions made by the Bank on the ground that the promotions have not been made in terms of the notification issued by the Registrar on 2.4.1980. The notification dated 2.4.1980 is also in respect of providing terms and qualifications for appointment to the officers and employees of the Central Cooperative Bank in the State and Rules of 1980 included a Loan Supervisor, who is promoted as Loan Inspector or Assistant Executive Officer.

In these circumstances, the initial promotion granted by the bank to Loan Supervisor in the bank by the competent authority of the bank, it cannot be said that the appointment on temporary basis by promotion to the post of Assistant Executive Officer were de hors the rules or suffers from any apparent illegality. In fact, the Cadre Authority by its

letter dated 12.5.1982 has communicated that since the Registrar has issued notification dated 2.4.1980 and thereafter issued circular dated 3.11.1981, it does not require any remark to frame separate rules for Cadre Authority and had suggested the officials of bank concerned in terms of circular providing guidelines that those Loan Supervisors who have completed 5 years service may be accorded promotion. In fact, the letter dated 14.3.84 was only to give effect to the notification and instructions issued by the Registrar and was not any recommendation or direction by the Cadre Authority in its capacity as selection agency under the Rules of 1976 by pointing out that it is no more required in view of the fresh directions issued by the Registrar on 2.4.1980.

In view of the aforesaid, the stand taken by the respondents that the Loan Supervisors were the officials of the Cadre Authority and were not employees of the bank or the Loan Supervisors are not eligible for consideration for appointment by promotion as Assistant Executive Officer in the bank is wholly unfounded and deserves to be rejected.

It is in the aforesaid circumstances, the directions issued by this Court in earlier writ petition referred to above has to be understood. The

court was clearly of the opinion that those officers who are continuing and whatever post the petitioners are holding, their cases may be examined for promotion under the Rules and they be given a permanent status on the promotional post. Unfortunately, the respondents without going into the spirit of the order and without examining the scheme of the Rules and orders issued by the Registrar from time to time in exercise of his authority, carried away by the irrelevant fact that the writ petition filed by the employees union was pending in the Court challenging the appointment to the promotional channel to the post of Loan Supervisor.

Since that petition itself has now been dismissed, on this ground also the pendincy of writ petition does not otherwise remain worth consideration.

As none of the reasons on which the impugned order dated 15.7.1993 is founded are sustainable, the order cannot be sustained nor initial order dated 15.9.1984 in each case reverting the petitioners to the post of Loan Supervisors without any reason and without affording any opportunity of hearing to the petitioner is sustainable.

Before parting with the discussion, I may also notice that the respondents in this regard have not chosen to explain the instances, facts and circumstances as stated by the petitioner, where the persons similarly situated to the petitioners have been promoted and they have been allowed to continue on higher post in the Bank in like manner and they have not been reverted back as the petitioners have been reverted back. Some of the persons reverted were subsequently regularly promoted to the post of Assistant Executive Officers.

In these circumstances, I do not find any reason for which the respondents could have given different treatment to the petitioners.

Consequently, the orders dated 15.7.1993 and 15.9.1984 in respect of each petitioners are quashed and the petitioners shall be deemed to be continuing on the post of Assistant Executive Officer since the date they were initially promoted by the respective orders. As I have found that under the scheme, Loan Supervisors were eligible to be considered and appointed on the post of Assistant Executive Officer and they have so been promoted by the orders of the Central Cooperative Bank in the first instance by order dated 15.9.1984, their appointments may be

considered on permanent basis by curbing out any procedural difficulties at the initial level in terms of the directions issued by this Court earlier in Writ Petition No.2793/1984 decided on 23.3.1994.

The petitions are therefore, allowed as aforesaid. There shall be no order as to costs.

[RAJESH BALIA], J.

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